

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District <b>EASTERN</b>
Name <b>Charles Devon Garrett</b>	Prisoner No. <b>BJ9946</b>	Case No. <b>1:22-cv-00899 (JLT)(HBK)</b>
Place of Confinement <b>California Men's Colony State Prison P.O.Box 8101 cell#2236 San Luis Obispo, Ca 93409</b>		
Name of Petitioner (include name under which convicted)  <b>CHARLES DEVON GARRETT</b>	Name of Respondent (authorized person having custody of petitioner)  <b>DANIEL SAMUEL</b>	

FILED

APR 10 2023

The Attorney General of the State of:  
**California**

**THIRD AMENDED PETITION**

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY *[Signature]*  
DEPUTY CLERK

1. Name and location of court which entered the judgment of conviction under attack  
**FRESNO COUNTY SUPERIOR COURT 1100 VAN NESS AVE FRESNO, CA 93724**
2. Date of judgment of conviction **July 26, 2019**
3. Length of sentence **29 years**
4. Nature of offense involved (all counts) **Attempted Murder PC 664/187; Assault with a semiautomatic PC245(b); Discharging a firearm PC246.3(a); Possession of a firearm by a felon PC29800(a)(1); additional gun enhancements PC 12022.53(c); PC 12022.5(a)**
5. What was your plea? (Check one)
 

(a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

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6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 

(a) Jury ☒
 (b) Judge only ☐
7. Did you testify at the trial?  
Yes ☒ No ☐
8. Did you appeal from the judgment of conviction?  
Yes ☒ No ☐

RECEIVED

APR 10 2023

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY CLERK

AD 21 (Rev. 5/83)

9. If you did appeal, answer the following:

(a) Name of court Fifth District Court of Appeal

(b) Result Conviction Affirmed

(c) Date of result and citation, if known June 14, 2021

(d) Grounds raised Prosecutorial Misconduct; Ineffective Assistance of counsel; Erroneous Jury instruction

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court \_\_\_\_\_

(2) Result N/A

(3) Date of result and citation, if known \_\_\_\_\_

(4) Grounds raised \_\_\_\_\_

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court N/A

(2) Result \_\_\_\_\_

(3) Date of result and citation, if known \_\_\_\_\_

(4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Fresno County Superior Court

(2) Nature of proceeding Habeas Corpus

(3) Grounds raised Prosecutorial Misconduct; IAC; court clerk deprived Petitioner procedural due process; IAC appellate counsel

AJ 241 (Rev. 5-85)

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result pending Haven't recieved a case number yet.

(5) Date of result: \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court Fifth District Court of Appeal

(2) Name of proceeding Writ of Error Coram Vobis

(3) Grounds raised Trial judge lacked Jurisdiction

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result pending

(6) Date of result: \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: DENIAL OF A FAIR IMPARTIAL TRIAL BEFORE A FAIR IMPARTIAL AND DISINTERESTED JUDGE JUDICIAL BIAS

Supporting FACTS (state *briefly* without citing cases or law): SEE ATTACHED

B. Ground two: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

C. Ground three: N/A

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four: N/A

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

n/a

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing MARK ASAMI CIUMMO AND ASSOCIATES

2014 TULARE STREET, SUITE 300 FRESNO, CA 93721

(b) At arraignment and plea MARK ASAMI

- (c) At trial MARK ASAMI
- (d) At sentencing MARK ASAMI
- (e) On appeal ATHENA SHUDDE ATTORNEY AT LAW  
3755 AVOCADO BLVD., SUITE#156 LA MESA, CA 91941
- (f) In any post-conviction proceeding N/A
- (g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?  
Yes ☒ No ☐
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?  
Yes ☐ No ☒
- (a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_
- (b) Give date and length of the above sentence: \_\_\_\_\_
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  
Yes ☐ No ☐

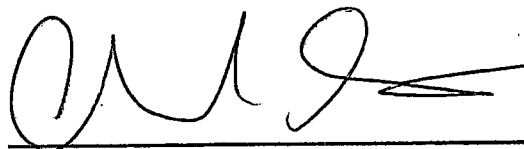
Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4/6/2023

Date

  
\_\_\_\_\_  
Signature of Petitioner

Charles Devon Garrett CDC#BJ9946  
California Men's Colony  
P.O.Box 8101 cell#2236  
San Luis Obispo, Ca 93409  
Petitioner in Pro se

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES DEVON GARRETT,

Petitioner,

1:22-cv-00899-JLT-HBK

PETITION FOR WRIT OF

HABEAS CORPUS

V.

DANIEL SAMUEL,

Respondent.

THIRD AMENDED PETITION

UNDER 28 U.S.C. §2254

FOR WRIT OF HABEAS CORPUS

After decision in California Supreme Court  
On Habeas Corpus, Challenging Judgement From  
The Superior Court County Of Fresno  
Judge Jane Cardoza Case No. F18903146/F17901972

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PROOF OF SERVICE	
FORM ATTACHED(HABEAS CORPUS)	

**JURISDICTION IS INVOKED PURSUANT TO:**

28 U.S.C §2254 (a)  
28 U.S.C §2254 (d)(1)  
28 U.S.C. §2254 (d)(2)

**FEDERAL PROVISIONS**

FOURTEENTH AMENDMENT  
FIFTH AMENDMENT



STATEMENT OF THE CASE

PETITIONER WAS DEPRIVED OF HIS FOURTEENTH AMENDMENT EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION, WHICH RESULTED IN PETITIONER'S ILLEGAL RESTRAINT OF HIS LIFE, AND LIBERTY IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION TO WIT: "NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN IT'S JURISDICTION THE EQUAL PROTECTION OF THE LAWS."THE TOTALITY OF THE UNDERLYING CLAIM PRESENTS A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

I.  
STATEMENT OF RELEVANT FACTS

1. On March 27, 2018, there was a reported shooting that took place at 949 N. Parkway drive at the Sierra Inn hotel in Fresno California. On March 29, 2018, Petitioner was arrested and taken into custody for allegedly possessing a loaded firearm, at the Legacy Commons Apartment complex 2255 S. Plumas southwest Fresno California. While Petitioner was incarcerated at the Fresno County Jail awaiting trial for the firearm charge, Detective John Mendes and Brandon Brown were conducting an investigation on the reported shooting that occurred on the night of March 27, 2018, at the Sierra Inn hotel located at 949 N. Parkway drive. The detectives investigation started towards the end of April 2018.

2. Detective John Mendes (whom was the lead detective), read police reports in regards to the reported shooting March 27, 2018. John Mendes was also in possession of "the video footage that was recovered from the Sierra Inn hotel on the night of the shooting", in reviewing the video footage, John Mendes took note that "the alleged victim was gone upon police arrival and was unidentified". John Mendes also learned that the responding officers located a 9mm spent shell casing at the scene. As John Mendes reviewed the video footage, he noticed a grey "charger enter the hotel parking lot prior to the shooting, once the charger exited the parking lot and drove off on Parkway dr. The suspect was then seen walking up to the alleged victim, then brandished a firearm in which the muzzle flash appeared from the handgun." John Mendes also took note that the alleged victim "walks away, and did not appear to be struck by gunfire", John

Mendes also took note of the suspect clothing, which was a "black shirt with white lettering".

3. John Mendes also reviewed the responding officers police reports, which John Mendes read a "witness reported statement". The sated that the "suspect was saying something about a stolen Cadillac ", John Mendes also learned that the "suspect was identified as a black male, in his 30's, bald, with facial hair and a goatee." Based on this information, John Mendes began to research "stolen Cadillac's that were reported stolen on the day of the shooting". John Mendes discovered that a female by the name of Felicia Edwards had reported a "tan Cadillac stolen on the night of the shooting", John Mendes discovered that Ms. Edwards number was associated with Petitioner (Charles Garrett).

4. John Mendes discovered that "Ppetitioner was in custody booked in the Fresno County Jail on firearm related charges." John Mendes conducts a further investigation related to the firearm Petitioner was accused of possessing the night he was arrested, and learned that the gun was a "380.Cal Ruger that had been reported stolen along with 2 other guns (9mm Ruger, and 40.Cal Tauras), these firearms were taken from a GMC Denali truck" John Mendes then contacted the eyewitness whom had made statements to responding officers the night the shooting occured, loaded with a "six pack photo line up, with Petitioner amongst the six photo's", the eyewitness whom identified himself as Vince Movesian, stated "he cannot be 100 percent sure but he believe's that Petitioner is the shooting suspect".

5. John Mendes then follows Ms.Edwards, whom happens to own a "grey charger", John Mendes learned that Ms.Edwards residence

was located at 5296 W.Holland Ave, Fresno California. John Mendes took notice that "the GMC Denali truck that contained the stolen guns " was found "less than a mile from Ms.Edwards address". Loaded with this information, John Mendes also took note that "the 9mm Ruger and 40.cal taurus handguns were still missing", and sense Petitioner was in custody for allegedly possessing the stolen 380.Cal Ruger, Petitioner became a "Prime suspect" in the " theft of the GMC Denali truck and stolen handguns". John Mendes also took note that "the 9mm shell casing seats the same caliber 9mm Ruger that was still missing" at the time of John Mendes investigation.

6. Loaded with the information gathered from John Mendes investigation, he applies for a search warrant to search Ms.Edwards vehicle and the 5296 W.Holland ave address. On or about May 2, 2018, Judge Jane Cardoza administered the execution of the search and seizure, which contained the entire investigation John Mendes conducted, and also labeled Petitioner (Charles Garrett) as the "Prime suspect" in which his name was also referenced in John Mendes search warrant application.

7. On May 7, 2018, Ms.Edwards vehicle and residence was searched, and Ms.Edwards was taken to Fresno police headquarters for questioning. Petitioner was later called to the Fresno Police department, while he was still "in custody awaiting trial for the gun possession charge". Petitioner initially waived his right to counsel prior to speaking with detective John Mendes and Brandon Brown. Petitioner was questioned about the shooting that took place March 27, 2018, and denied being the shooter. Petitioner eventually terminated the interview with detectives and returned

back to the Fresno County Jail where he was currently being housed.

8. The evidence that was recovered from the search warrant consisted of: Ammunition, miscellaneous mail, a black T-shirt that read "Courtesy of the Mac" in white lettering, and a pair of khaki shorts. Officers recovered a 9mm FN firearm from Felicia Edwards vehicle, and a extra magazine. Petitioner was charged with additional charges while he was awaiting trial for the gun possession charge. Petitioner was arraigned on May 14, 2018, on the following charges: Assault with a firearm PC245(b); discharging a firearm PC246.3(a); Possession of a firearm by felon PC 29800(a)(1), it was further alleged that Petitioner personally used a gun PC12022.5(a), and the crimes charged were committed for the benefit of a street gang 186.22.

9. Petitioner was acquitted for the gun charge he was arrested for, by a jury of his peers on August 18, 2018. Petitioner went to Preliminary hearing on August 23, 2018, and was represented by Mark Asami. Petitioner was then held to answer on the charges referenced above, however, District Attorney added an additional charge of Attempted Murder on September 10, 2018. On February 19, 2019, Petitioner went to trial and was assigned to Judge Skiles but Mark Asami filed a disqualification motion pursuant to California Civil Procedure §170.6, the motion was granted and Petitioner was then assigned to department 52 before Judge Cardoza.

10. Upon arrival Judge Cardoza made a disclosure consistent with Judicial Conduct Canons that "her son is a District Attorney employed with the Fresno District Attorney's office". However,

Judge Cardoza did not disclose the California Civil Procedure § 170.1(a)(8)(A)(i) formulation as required commentary to the California Judicial Conduct Canons 6D(5)(a). John Mendes was also present throughout the duration of the trial proceeding. And the evidence recovered from the search warrant Judge Cardoza administered, was used against Petitioner during the course of the trial proceeding. On or about February 26, 2019, District Attorney Daniel Walters filed a in liminae motion, requesting the court to "admit a jailhouse kite" that was recovered from Petitioner's "Jail cell", as additional evidence on behalf of the states case in chief. Mark Asami filed a prosecutorial misconduct motion, in response to the states in liminae motion, however, Judge Cardoza granted Mr. Walters in liminae motion and denied Mark Asami's prosecutorial misconduct motion.

11. Petitioner was found guilty March 5, 2019, of all counts. March 6, 2019, Petitioner began the gang enhancement trial, during pre trial motions, Mr. Walters filed another in liminae motion. This request, was for the purpose of "strengthening the gang enhancement charge", which requested that "Petitioner be ordered to remove his dress out clothing" so that gang detectives can take pictures of "Petitioner's undressed body in search of gang tatto's" that the state "thinks will appear on Petitioner's body" Petitioner made a verbal objection, by stating "nobody is going to touch me". Judge Cardoza then stated "the court will allow, and the court has granted the Prosecutions motion. In order for that to take place, the law enforcement is authorized to use reasonable force to conduct it's inspection".

12. Petitioner was then escorted to the Fresno County Jail and was told to "strip out", however, Petitioner refused and positioned himself in a defensive position, but Petitioner was not harmed as a result of the stand off. The gang enhancement resulted in a hung jury and Judge Cardoza declared a mistrial March 12, 2019. On June 10, 2019, Petitioner arrived in Judge Cardoza's courtroom for his new trial motion proceeding. Petitioner had a typed out written letter identifying several reasons "why he should have new counsel to draft an effect new trial motion". Judge Cardoza construed Petitioner's typed letter as if he requested to represent himself in Pro per in the filing of a new trial motion. Judge Cardoza denied Petitioner his request for new counsel. Then proceeded to address the issues that were prescribed in the typed letter.

13. The way Petitioner crafted the typed letter, related to events that involved Judge Cardoza's own conduct. Judge Cardoza was able to revisit the investigative process, in which she was placed back into her previous position "acting as Magistrate". Judge Cardoza then denied Petitioner's new trial motion. On July 26, 2019, Judge Cardoza sentenced Petitioner to the maximum of 29 years. It later became known that Judge Cardoza changed the "Penal code numbers on Petitioner's Abstract of judgment form", Petitioner's Assault with a firearm Penal code number was changed from 245(b) to "186.22" this added an additional 6 points to Petitioner's prison points which secured him to a level 4 maximum state prison facility. Judge Cardoza was in control of her own case.



## II. PROCEDURAL HISTORY

1. Petitioner filed several habeas corpus petitions in the Fresno county Superior court, which he challenged the conviction and sentence of the underlying case. Petitioner's core claim was that " he was denied a fair impartial trial before a fair impartial and disinterested judge", every single habeas petition alleged that "Judge Cardoza was disqualified to preside over Petitioner's underlying case", therefore, Petitioner titled the claim argueing "Judicial Bias".

2. Petitioner's state habeas corpus petitions were all denied in the Superior Court County of Fresno. Petitioner then filed two seperate disqualification motions directly in the trial court, Petitioner referenced the Superior Court case numbers that were a part of the abstract of judgement form. The Fresno County Superior Court did not respond to any of Petitioner's disqualification motions that were rendered via affidavit under penalty of perjury.

3. Petitioner filed a state habeas petition in which he labeled a "Writ of Mandate", Petitioner attached the disqualification motions as exhibits. Petitioner requested the Fifth District Court of Appeal to "Disqualify Judge Cardoza pursuant to the California Civil Procedure §170.3". Petitioner also titled a "Statement of Disqualification" segment in the habeas petition, Petitioner allegations in this particular segment, demonstrated that Judge Cardoza was disqualified pursuant to the United States Supreme Court Precedents.

4. Petitioner rendered the following statement; "Under the



United States Constitution of the Fourteenth Amendment, Due Process affords Petitioner to a proceeding in which he may present his case with assurance that the arbiter is predisposed to find against him see *Marshall v. Jerrico Inc.*, 446, U.S. 238, 64 L.Ed 2d 182, 100 S.Ct.1610(1980)". Petitioner further rendered the following statement; " When a state deprives a person of liberty or property through a hearing held under statutes and circumstances which necessarily interfere with the course of justice, it deprives him of liberty or property without due process of law"see *Tumey v. Ohio*, 273 U.S. at 523, 532, 47 S.Ct. 437 (1927).

5. Petitioner later amended the habeas petition (which he thought meant "add on"). The amended motion contained four habeas petitions that were all denied by the Fresno County Superior Court, Petitioner also attached the courts rulings to each petition that was denied(except for one particular habeas petition that was denied and Petitioner never recieved the denial order). Petitioner rendered the arguement that the Superior Court " deviated from United States Supreme Court Precedents" when the court addressed his "Judicial Bias" claim. Petitioner alleged that the Fresno County Superior Court's rulings were "clearly erroneous and objectively unreasonable, which stemmed from an unreasonable determination of the facts in light of the search warrant Petitioner has presented in all of his previous denied habeas petitions".

6. The Fifth District Court of Appeal denied Petitioner's habeas corpus along with the subsequent amendments and motions on April 6,2022. Petitioner filed a timely Petition For Review

in the California Supreme Court on April 15, 2022. The Fifth District Court of Appeal transmitted the full record of the documents Petitioner filed in the Fifth District Court of Appeal to the California Supreme Court as required pursuant to California Rules of Court 8.512(a). The way Petitioner crafted the Petition For Review, conformed with the California Rules of Court 8.500(b); 8.504(1). Petitioner advanced the "Judicial Bias" claim under Equal Protection of the laws and Due Process of law which both Clauses are vested in the Fourteenth Amendment United States Constitution.

7. Petitioner fashioned the Petition For Review by asking "important questions of Federal law" see Petition For Review page 6 California Rules of Court 8.500(b). Petitioner also alerted the California Supreme Court that, "Review is also necessary to exhaust Petitioner's Federal claims through state court remedies" see Petition For Review page 2 lines 14-15 California Rules of Court 8.508(a); 8.508 (b)(3). Petitioner must also note, he served a copy of the Petition For Review on the Fifth District Court of Appeal, Fresno County Superior Court, Attorney General, and the District Attorney's Office, complying with the California Rules of Court 8.508(c).

8. The California Supreme Court had inherent powers to grant review of Petitioner's Petition For Review, or at the very minimum, provide Petitioner a mechanism where he could be heard in the court of appeal pursuant to California Constitution Article VI§12; California Rules of Court 8.528. Petitioner's Petition For Review is prima facie showing of a deprivation of Federal and Statutory rights that was not afforded to Petitioner,

when the state "seeked to deprive him of his life, and liberty", thus, Petitioner was deprived of Equal Protection and Due Process Clauses under the Fourteenth Amendment to the United States Constitution. And because Petitioner is not an attorney employed by the Attorney General's Office, and he isn't a celebrity that is represented by a lawyer i.e. *People v. Freeman*, 47 Cal.4th 993, 222 3d 177, 103 Cal.Rptr.3d 723 (2010); *Jolie v. Superior Court of Los Angeles County* case No. B308958, he was denied relief in the California Supreme Court, and the Fifth District Court of Appeal.

9. Petitioner was denied Equal Justice during the remedial posture, in which the California Supreme Court is supposed to "administer justice", once the court recognizes Fundamental irregularities. In any event, Petitioner characterized his "Judicial Bias" claim by rendering the following contention; "UNITED STATES CONSTITUTION 14TH AMENDMENT EQUAL PROTECTION VIOLATION DUE TO PETITIONER BEING DENIED HIS DUE PROCESS RIGHT TO A FAIR IMPARTIAL JUDGE" see Petition For Review topical index. Petitioner has proven his claim by citing Statutory law, and Federal law. Petitioner further stated on page 2 lines 3-7 "The Petition For Review that arrives to this Honorable Court proves that the judgement was rendered by a legally Disqualified Judge, that deems Petitioner's conviction unlawful according to California law".

10. Petitioner contends that the "Judicial Bias" claim that was presented in the Petition For Review, is not a "brand new" argument, in fact, it's just a concised argument that Petitioner raised in one of his "many habeas petitions", that were also

transmitted to the California Supreme Court as mentioned above. Thus, Petitioner's core argument with regard to the "Judicial Bias" claim is in harmony with Petitioner's contention that is titled in the Topical Index, which also relates to each habeas petition, Petitioner has filed in the state courts. Thus, Petitioner has fairly presented the "Judicial Bias" claim to the highest court and the California Supreme Court has had ample opportunity to decide the substance of the "Judicial Bias" claim presented in the Petition For Review see *Picard v. Conner*, 404, U.S. 270, 276, 30 L.Ed. 2d 438, 444, 92 S.Ct. 509 (1971).

11. By contrast, Petitioner has asserted, "he is illegally restrained of his personal liberty" see Petition For Review page 2 lines 8-9, this assertion triggers a "liberty interest protected by the Federal Due Process Clause" warranting Federal habeas corpus relief see *Carter v. Kentucky*, 450 U.S. 288, 67 L. Ed. 2d 241, 101 S.Ct. 1112 (1981); *Hicks v. Oklahoma*, 447 U.S. 343, 65 L.Ed. 2d 175, 100 S.Ct. 2227 (1980). Petitioner has exhausted his Judicial Bias claim, and he followed the California Rules of Court by doing so, thus, Petitioner "did not make the rules, all he did was follow them", which will give the Respondent guidance on how the Petition For Review was presented, if the Respondent would just read the California Rules of Court, Federal provisions Petitioner asserted in the Petition For Review and the rest of the previous denied petitions that were transmitted to the California Supreme Court (Petitioner has copies of those habeas petitions as well).

12. Petitioner contends, he was deprived of the Equal Protection

and Due Process Clauses of the United States Constitution, and he is currently illegally restrained of his life, and liberty as a result. And the state courts failure to find a Due Process violation on the basis of "Judge Cardoza's unconstitutional failure to recuse in favor of an impartial and disinterested judge" as applied to the Fourteenth Amendment Due Process Clause to the United States Constitution, constituted an objectively unreasonable application of clearly established Federal law, as guided by Supreme Court Precedents, which collectively, derived from an unreasonable determination of the facts in light of the search warrant Judge Cardoza administered, and was also presented in every single petition Petitioner has filed in the state courts and was also presented in the Petition For Review that Petitioner filed in the California Supreme Court.

III.  
ARGUMENT

13. Petitioner contends, that he was deprived of Equal Protection of the laws and Due Process of law as he was denied his Constitutional right to a "fair impartial trial before a fair impartial and disinterested judge", due to Judge Cardoza's unconstitutional failure to recuse herself from Petitioner's trial proceeding, on the basis of "her (Judge Cardoza) participation during the accusatory process of Petitioner's underlying case was of critical import that require's recusal". Petitioner further contends, Judicial Bias was committed when Judge Cardoza failed to recuse herself in favor of an impartial and disinterested judge.

14. Judge Cardoza had a ethical responsibility to recuse herself from Petitioner's underlying case commentary to California Judicial Conduct Canons 3C (which have been revised since 2018). Judge Cardoza's failure to disclose and recuse, based on her previous participation in the accusatory process within the meaning of California Civil Procedure §170.1(a)(8)(A) (i) formulation, inherently deprived Petitioner of Equal Protection of the laws and Due Process of law as he was denied his Constitutional right to a "fair impartial trial before a fair impartial and disinterested judge" as applied to the United States Constitution Fourteenth Amendment Due Process and Equal Protection Clauses.

15. The combination of Judge Cardoza's "failure to disclose and unconstitutional failure to recuse" materially and Prejudicially affected Petitioner, because Judge Cardoza was permitted to

become a judge of her (Judge Cardoza) own case. Judge Cardoza was "disqualified" by her interest in Petitioner's underlying case. Petitioner basis his Judicial Bias claim solely on the mere facts that was presented in the Petition For Review and all of his state habeas petitions which proves that Petitioner was unconstitutionally denied the latter Due Process of law, in which Petitioner relied on United States Supreme Court Precedents as a fundamental demonstration of how a Due Process violation was committed. Thus, Petitioner does not have to "exhaust any of his specific allegations rendered in the Petition For Review" in order to prove his Judicial Bias claim, the only contention that needs "exhaustion" is the assertion of "Judge Cardoza was disqualified to preside over Petitioner's underlying trial proceeding", Petitioner points the search warrant Judge Cardoza administered and the applicable law to prove his claim.

16. By contrast, Petitioner does not rely on any "specific allegations" in order to prove Judicial Bias, Petitioner does not base his Judicial Bias claim "trying to puzzle up" a persuasive argument trying to prove that his Due Process rights were violated. Petitioner's Equal Protection and Due Process rights were violated when "Judge Cardoza failed to recuse from his underlying case", and the adverse rulings that flowed after that, were rendered by a "biased judge" whom participated in the "accusatory process" of Petitioner's underlying case. Thus, Judge Cardoza was not a neutral, impartial, and disinterested judge and the facts Petitioner presented in the Petition For Review, and all of his state habeas petitions, proves his contentions.

17. However, this does not mean Petitioner forfeits his asser-



tions rendered in the Petition For Review or any of his state habeas petitions, Petitioner is just trying to explain that "he is'nt relying on specific allegations to prove his Judicial Bias claim" Petitioner relies on the "factual showing of Judge Cardoza's unconstitutional failure to recuse deprived him of Equal Protection and Due Process of the laws". Petitioner adopts the language in Murchison "a judge cannot be a judge of his/her own case". Petitioner can "go on and on" about how "Judge Cardoza exhibited bias through her adverse rulings throughout the duration of the trial proceedings", but that's what "happens when a judge presides over his/her own case". The most crucial adverse ruling was committed when Petitioner requested for new counsel to file a new trial motion, this critical denial "kept a fresh pair of eye's, away from Petitioner's underlying case", taking away "all hope, of new counsel potentially finding out the fact that Judge Cardoza was sitting as a legally disqualified judge".

18. First Judge Cardoza was apart of the accusatory process in which she was acting as Magistrate evaluating evidence in the form of an affidavit, which Petitioner (Charles Garrett) was the "Prime Suspect", then rendered probable cause as a result of her analysis, then 9months and 17days later, Judge Cardoza became the 13th Juror of the "same case she helped put together", in which Petitioner (Charles Garrett) was then "the accused". Judge Cardoza was then able to evaluate the evidence that was recovered from the investigation that "she was initially apart of", then analyzed "whether any wrong was in fact committed by Petitioner" then was able to revisit the investigative process during the



new trial motion proceeding, and then had the enjoyment of "deciding Petitioner's fate" during the sentencing phase of Petitioner's underlying case, in which he was sentenced to the maximum sentence of 29 years. These set of facts alone, demonstrate a fundamental deprivation of the latter Due Process of law in Petitioner's underlying case.

19. The underlying facts prescribed, demonstrates that Judge Cardoza's "own personal knowledge and impression" of Petitioner's underlying case, that was acquired through her role in the accusatory process, demonstrates that Judge Cardoza already decided that "Petitioner was guilty, before the trial even started". Thus, Petitioner rests his Judicial Bias claim solely on the bases of "Judge Cardoza's prior relationship with Petitioner was of critical import that required recusal, and Judge Cardoza's unconstitutional failure to recuse in favor of an impartial and disinterested judge, is a prima facie fact that overcomes the presumption of honesty and integrity of Judge Cardoza being impartial presiding over Petitioner's underlying trial proceeding."

20. Petitioner has proven "he was denied his Due Process right to a fair impartial judge" in the Petition For Review, and he has identified his Judicial Bias claim solely on the bases of "Judge Cardoza failure to disclose and recuse denied Petitioner Procedural and Substantive Due Process of law" see Petition For Review page 22 lines 1-12. Thus, Petitioner is not required to "exhaust specific allegations" unless Petitioner is relying on "circumstantial evidence" such as "a judge's adverse rulings" to prove his "Judicial Bias claim". Thus, Petitioner's Judicial

Bias claim was committed when Judge Cardoza failed to recuse herself from Petitioner's underlying case.

21. The state courts has turned "a blind eye" to Petitioner's Statutory rights that proved Judge Cardoza was legally disqualified to preside over Petitioner's underlying case, this brand of posture clearly denied Petitioner Equal Protection of the laws that is vested in the Fourteenth Amendment United States Constitution. Petitioner arrives to this honorable court requesting the court to disqualify Judge Cardoza based on Due Process principles, the underlying facts that were presented in the Petition For Review is prima facie showing of a Due Process violation, as Judge Cardoza was apart of the accusatory process then became presiding judge of her own case. This posture must be forbidden "if the guarantee of Due Process is to be adequately implemented".

MEMORANDUM POINTS AND AUTHORITIES

Clearly established Federal law, as determined by the Supreme Court of the United States, 28 U.S.C. §2254(d)(1), recognizes not only actual bias, but also the appearance of bias, as grounds for disqualification:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system has endeavored to prevent even the probability of unfairness. To this end no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered." The United States Supreme Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge...not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law" quoting *Tumey* and *Murchison* see *In re Murchison*, 349 U.S. 133, 136, 99 L.Ed. 942, 75 S.Ct. 623 (1955); *Tumey v. Ohio*, 273 U.S. 510, 535, 71 L.Ed. 749, 47 S.Ct. 437, 5 (1927). "Structural error occurs when a judge with actual bias against a defendant presides at his trial. Denial of an impartial judge is structural error that demands reversal. The entire conduct of the trial from beginning to end is obviously affected by the presence on the bench of a judge who is not impartial. And the appellate court cannot review a trial transcript to determine whether the presiding judge, despite his actual bias, was fair. The record does not reflect the tone of voice of the judge, his facial expressions, or his unspoken attitudes and mannerisms, all of which, as well as his statements

and rulings of records, might have adversely influenced the jury and affected it's verdict" see head note<sup>3</sup> in *Norris v. United States*, 820 F.3d 1261 (11th Cir. 2016). The search warrant Judge Cardoza administered is a "smoking gun" that proves "actual bias" which create's "a possible temptation so severe that any court might presume an actual, substantial incentive to be biased" see *Franklin v. McCaughtry*, 398 F.3d 955 (7th Cir. 2005); *Bracy v. Gramley*, 520 U.S. 899, at 412 (1997). For the state courts to acknowledge the search warrant Judge Cardoza signed and failure to find a due process violation on the bases of Judge Cardoza's failure to recuse in favor of an impartial jurist, was an unreasonable determination of the facts in light of the search warrant presented in the state habeas petitions and the Petition For Review that was filed in the California Supreme Court 28 U.S.C. §2254(d)(2) " Due Process is violated when a judge has a dual role of both investigating and adjudicating a matter" *Murchison, supra*, 349 U.S. at 139; see also *Hurles v. Ryan*, 706 F.3d 1021 (9th Cir. 2013). Based on the "extreme facts" presented in the Petition For Review Petitioner respectfully request this honorable court to disqualify Judge Cardoza and vacate Petitioner's conviction and sentence, in the interest of justice. see *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881, 129 S.Ct. 2252, 173 L.Ed. 2d 1208 (2009). By contrast, this honorable court should also consider the risk of injustice to Petitioner in this underlying case, and "the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in judicial process" quoting *Liljeberg v. Health Serv. Acquisition Corp*, 486 U.S. 847, 862-864 (1988). That is because,

Judge Cardoza's participation in the accusatory process of Petitioner's underlying case, then becoming presiding trial judge in the very same case, this posture must be "forbidden if the guarantee of due process is to be adequately implemented" quoting *Withrow v. Larkin*, 421 U.S. 35, 46 95 S. ct. 1456, 43 L.Ed. 2d 712 (1975). "Having been a part of the accusatory process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused" quoting *In re Murchison*, 349 U.S., at 136-137, 75 S.ct.623, 99 L.Ed. 942(1955). Judge Cardoza's unconstitutional failure to recuse in favor of an impartial and disinterested judge, is a prima facie fact that overcomes the presumption of honesty and integrity of Judge Cardoza being disinterested in presiding over Petitioner underlying case, this demonstrates a personal interest in Judge Cardoza presiding over Petitioner's trial proceeding. Thus, Petitioner has met his burden in proving his judicial bias claim see *Paradis v. Arave*, 20 F.3d 950, 958(9th Cir.1994) contrary to *Rhoades v. Henry*, 598 F.3d 511, 519 (2010); *Larson v. Palmateer*, 515 F.3d 1057, 1067 (9th Cir.2008); see also *Bracy v. Gramley*, 520 U.S. at 909, 117 S. Ct.1793(1997). As the United State Supreme Court stated in *Williams* "an unconstitutional failure to recuse constitutes structural error" *Williams v. Pennsylvania*, 136 S.Ct. at p.1909 (2016). Thus, the state courts failure to find a Due Process violation on the bases of "Judge Cardoza failing to recuse in favor of an impartial jurist ", constituted an objectively unreasonable application of clearly established Federal law, as guided by Supreme Court Precedent *Little v. Kern County Superior Court*, 294 F.3d 1075, 1080(2002)

The fact that Judge Cardoza administered the search warrant, is a strong enough influence, that a reasonable jurist may presume actual bias see *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1375 (7th Cir. 1994); *Dyas v. Lockhart*, 705 F.2d 993, 997 (8th Cir. 1983); see also *Paradis v. Arave*, 20 F.3d 950, 958 (9th Cir. 1994). Because Judge Cardoza was actually biased, Petitioner is entitled to a new trial unburdened by any "possible temptation...not to hold the balance nice, clear and true between the state and the accused" *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927). The United State Supreme Court Precedent does not require a Petitioner to prove "actual bias" by rendering "speculative theories", Federal courts asks the questions the United States Supreme Court Precedents require: "Whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable" Quoting *Rippo v. Baker*, 137 S.Ct. 905, 197 L.Ed.2d 167 (2017). Thus, Petitioner rests his Judicial Bias claim solely on the bases of "Judge Cardoza's failure to recuse" denied Petitioner Equal Protection and Due Process of law as he stated in the Petition For Review. Reflecting on the principles of Due Process, "In order for Justice to function, Justice must satisfy the appearance of Justice" *Aetna Life Ins. Co v. Lavoie*, 475 U.S. 813, 825, 106 S.Ct. 1580, 89 L. Ed. 2d 823 (1986).

IV.

CONCLUSIONS OF LAW

The Equal Protection Clause to Fourteenth Amendment United States Constitution protects Petitioner from irrational discrimination or disparate treatment unjustifiable by any legitimate governmental interest, the Due Process Clause that is also embodied in the Fourteenth Amendment United States Constitution, it's Procedural and Substantive manifestations protects against unconstitutional deprivations of life, liberty, or property

UNITED STATES CONSTITUTION AMENDMENT XIV

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws."

Petitioner respectfully request this honorable court to grant the habeas petition that arrives to this honorable court, in favor of Petitioner's Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution.

V.  
PRAYER FOR RELIEF

Petitioner respectfully request this honorable court to grant the habeas corpus petition that arrives to this honorable court as Petitioner was denied the Equal Protection and Due Process Clauses to the United States Constitution due to the fundamental defect complained of, that is prescribed in the habeas corpus petition that arrives to this honorable court. It is respectfully submitted that this honorable court order the following:

- 1) Order an Evidentiary hearing to receive testimony supporting Petitioner's contention;
- 2) After full consideration, set aside Petitioner's conviction, and sentence releasing him from CDCR State Prison; and
- 3) Grant Petitioner any further or other relief that is just,

IN THE INTEREST OF JUSTICE.



DECLARATION OF CHARLES DEVON GARRETT


I, Charles Devon Garrett, declare under penalty of perjury that I am over the age of eighteen, and of sound mind to make this declaration that I was born in the State of California in the city of Fresno on August 10, 1987. I am in the jurisdiction of the State of California and a United States Citizen.

That, I am a descendant of the African slaves that became citizens of the United States through and by the Fourteenth Amendment of the United States Constitution. On February 19, 2019, I was deprived of Due Process of law and Equal Protection of the law, due to Judge Cardoza becoming a Judge of her own case, in which I was the accused. I am currently fighting for my Equal Protection and Due Process rights, which brings me to this honorable court via habeas corpus.

I am the Petitioner in this action. All facts alleged in the above document, not otherwise supported by citations to the record, or other documents, are true of my own personal knowledge and recollection of stated events. I declare under penalty of perjury that the above is true and correct and that this declaration was executed on 4/6/2023 at San Luis Obispo, California

Dated: April 6, 2023

Respectfully Submitted,



Charles Devon Garrett

Petitioner in Pro se

**PROOF OF SERVICE BY MAIL**

**BY PERSON IN STATE CUSTODY**

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Charles Devon Garrett, declare:

I am over 18 years of age and a party to this action. I am a resident of \_\_\_\_\_

California Men's Colony State Prison,

in the county of San Luis Obispo

State of California. My prison address is: P.O.Box 8101 cell#2236

San Luis Obispo, Ca 93409

On April 6, 2023 (DATE)

I served the attached: Habeas Corpus Petition 28 U.S.C. § 2254

(DESCRIBE DOCUMENT)

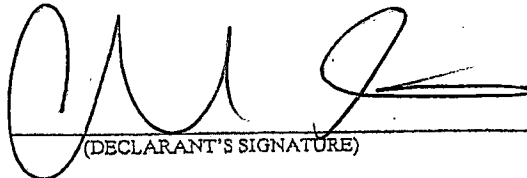
on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Charles Devon Garrett CDC#BJ9946  
California Men's Colony cell#2236  
P.O.Box 8101  
San Luis Obispo, Ca 93409

Clerk of United States  
District Court  
To: Eastern District #  
2500 Tulare Street suite 1501  
Fresno, Ca 93721

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 4/6/2023  
(DATE)

  
(DECLARANT'S SIGNATURE)